IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 684 of 2002
to
FIRST APPEAL No 689 of 2002

with

CIVIL APPLICATIONS No 2632 to 2637 of 2002
in
FIRST APPEAL No 684 to 689 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE K.M.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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UNITED INDIA INSURANCE CO LTD.

Versus

HARESHGIRI SOMVAGIRI MEGHNATHI

Appearance:

1. First Appeal No. 684 to 689 of 2002
MR PV NANAVATI for Petitioner No. 1
MR VIBHUTI NANAVATI for Petitioner No. 1
NOTICE SERVED for Respondent No. 1
NOTICE NOT RECD BACK for Respondent No. 2

2. Civil Application No. 2632 to 2637 of 2002
MR PV NANAVATI for Petitioner No. 1
RULE NOT RECD BACK for Respondent No. 1

CORAM: K.M. MEHTA, J.

Date of decision: 03/05/2002

COMMON ORAL JUDGEMENT

1. As common question of law and facts are involved in the above numbered first appeals, I propose to dispose of these first appeals by this common judgment.

2. United India Insurance Company Ltd. - appellant (original opponent No.2) has filed these First Appeals against the judgment and award dated 7th December, 2001, passed by the learned Judge, Motor Accident Claims Tribunal (Main), Amreli, in order below application dated 6.8.2001 vide Ex.4 for interim relief under Sec.140 of the Motor Vehicles Act in M.A.C.P. Case No.435/2001. These appeals have been filed under Sec.173 of the Motor Vehicles Act, 1988 (hereinafter referred to as `the Act'). The learned Judge by the impugned judgment and award allowed the application under Sec.140 of the Act and also held that the claimant do recover a sum of Rs.25,000/- with interest at the rate of 9% from the date of application till realisation from the opponent Nos.1 and 2 who are jointly and severally liable.

3. Hareshgiri Somvagiri Meghnathi - original claimant has filed original claim petition on the ground that the accident occurred on 2.6.2001 at about 11.45 a.m. on Visavadar-Dhari highway. It has been submitted that the case was registered with Visavadar Police Station being Case No.I 78/2001. It has been submitted that the claimant had suffered fracture and he has also produced medical certificate showing the injuries sustained by him. It has been submitted that the vehicle which was involved in the accident is a rickshaw bearing Registration No.GJ-11-U-5517.

3.1 It has been further submitted before me by the learned advocate for the appellant that original application under Sec.166 of the Act has been filed before the Tribunal which has been pending in this behalf. In the said claim petitions, the claimants have filed application under Sec.140 of the Act to recover interim compensation of Rs.25,000/-. The Tribunal considered the evidence on record and after considering the provisions of Sec.140 of the Act and the documents produced in this case, namely FIR, copy of panchnama of the scene of offence, copy of receipt of insurance premium and copy of the injury certificate. The Tribunal after considering all the documents including the insurance policy came to the conclusion that the claimants sustained injuries as a result of the rash and

negligent act of driving on the part of the driver of the rickshaw who had lost control over the steering and thereby the accident was caused. The Tribunal has come to conclusion that in the accident the claimants received vehicular injuries of fracture and it has resulted in permanent partial disablement and, therefore, they are entitled to interim compensation of Rs.25,000/- with interest. Accordingly, the tribunal has awarded the said amount to the claimants and the appellant and respondent No.2 were jointly and severally ordered to pay the said amount of compensation which has given rise to the present appeals.

3.2 Mr.V.P.Nanavati, learned advocate for the appellant insurance company has raised several contentions. One of the contention is that, in this case the persons travelling in the vehicle were unauthorised passengers and there was a breach of the terms of policy. The vehicles in which claimants were travelling was the goods carriage vehicle. The passenger simpliciter cannot be carried. Even if it is considered that the passengers were carried as gratuitous passengers, they could not be carried in the vehicle of the nature which is involved in the accident. He submitted that though the Hon'ble Supreme Court has decided earlier case in the case of New India Assurance Co.Ltd vs. Satpal Singh reported in AIR 2000 SC 235 in favour of the claimant and against the insurance company. However, the Hon'ble Supreme Court has referred this matter to a larger Bench to reconsider the view taken in Satpal's case (supra) by the Hon'ble Supreme Court in the case of New India Assurance Co. Ltd. vs. Asha Rani and Others reported in 2001(6) SCC 724.

4. I have considered the submissions advanced by Mr.Nanavati, learned advocate for the appellant and I have also gone through the averments made in the appeals, the grounds set out therein, impugned order and the copies of the documents supplied by him during the course of his submission.

5. Learned advocate for the claimants submitted that the question which is referred before the Hon'ble Supreme Court can be considered by the tribunal at the final hearing of the petition. Meanwhile, the claimants may be given some interim amount under no fault liability. In this behalf, I may observe that at this stage though I am dismissing the appeal of the insurance company but the claimant will give one additional undertaking before the tribunal that, in the event the Hon'ble Supreme Court decides the case in favour of the insurance company, the

amount which the claimants received from the insurance company will refund back to the insurance company in this behalf.

6. It may be appreciated that the order passed under Sec.140 of the Act under no fault liability principle is an interim compensation which is subject to adjustment against the final award that will be passed in the claim petition No.435/2001 and others which are pending before the Tribunal. This principle is established by the Hon'ble Supreme Court in the case reported in Oriental Insurance Company Ltd. vs. Hansrajbhai V.Kodala reported in 2001(4) JT 477.

7. So far as involvement of the vehicle in the accident is concerned, there is no dispute. There is also no dispute that the claimants sustained fracture injuries coupled with disability and, therefore, by virtue of Sec.140 of the Act, they are entitled to receive interim compensation of Rs.25,000/- and interest thereon.

8. In view of the aforesaid observations made by me earlier, I do no see any justifiable reason or valid ground to interfere with the impugned order at this stage. The contention which is raised by Mr.Nanavati for the appellant can very well be raised before the Tribunal while deciding the main claim petitions filed under Sec.166 of the Act and the Tribunal on the said contentions being raised by the appellant shall adjudicate in accordance with law uninfluenced by the fact that the claimants have been awarded compensation of Rs.25,000/- under no fault liability principle and therefore with a view to safeguard the interest of the appellant an undertaking of the original claimants is required to be obtained so that the original claimants shall not abandon the main claim petition and withdraw the amount unconditionally with a view to fritter away the amount of compensation of Rs.25,000/- and interest thereon which is awarded in favour of the claimants and which is obviously required to be disbursed in their favour. The claimants will have to give this usual undertaking over and above the undertaking observe in this behalf.

9. In this view of the matter, it is directed that the original claimants shall file an undertaking before the Tribunal within a period of four weeks of the service of this order to the effect that the main claim petitions shall not be abandoned, shall not be withdrawn and shall not be permitted to be dismissed for default or for any

other cause and that the claimants shall obtain a decision on merit in the said claim petitions. The claimants shall also file additional undertaking which I have referred in para 5 of my judgment. The amount awarded under the impugned orders shall be adjusted against the final award in the main claim petitions. On the aforesaid undertaking being filed by the claimants, the amount under the impugned orders may be withdrawn by the original claimants on furnishing security to the satisfaction of the Tribunal in terms of directions contained in the impugned orders.

10. Subject to the aforesaid observations and directions, the appeals are dismissed with no order as to costs.

11. The amount deposited in appeals if any with the registry is directed to be transmitted to the tribunal forthwith. D.S. permitted.

12. Since the appeals are dismissed at the admission stage, the above numbered civil applications do not assume any survival value and hence they are also rejected with no order as to costs.

(K.M. Mehta, J.)
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